

LABOUR DEPARTMENT

The 3rd December, 1985

No. 9/5/84-6Lab/9902.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. National Engineering Works, Sihi Gate, Ballabgarh.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA
FARIDABAD

Reference No 178/1983

between

SHRI DHARAMPAL SINGH, WORKMAN AND THE MANAGEMENT OF M/S NATIONAL
ENGINEERING WORKS, SIHI GATE, BALLABGARH

Present :—Shri R.L. Sharma for the workman.
Shri G.S. Chaudhary for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Dharampal Singh, Workman and the Management of M/s National Engineering Works, Sihi Gate, Ballabgarh, to this Tribunal for adjudication :—

Whether the termination of services of Shri Dharampal Singh was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. In the demand notice dated 26th November, 1982 and claim statement dated 1st June, 1984, it was alleged that the claimant was employed in 1980 as Turner and was getting Rs. 375 per month. It was further alleged that the Management had terminated his services on 16th November, 1982 without any reason in an illegal manner as such the claimant was entitled to reinstatement with full back wages.

3. The Management in its written statement dated 21st June, 1984 pleaded that the Industrial Tribunal had no jurisdiction to adjudicate upon the present dispute because the respondent was governed by the provisions of Punjab Shops and Commercial Establishments Act, 1958. It was further alleged that the claimant was appointed on 4th January, 1982 but left the job and he again joined service in June, 1982, and worked upto August, 1982, but again left the job. It was further pleaded that the claimant again joined service on 1st November, 1982 and worked upto 15th November, 1982 and thereafter he remained absent from his duty without any intimation when the Management terminated his services,—vide letter dated 23rd November, 1982. It was also pleaded that the reference was bad in law because the provisions of Punjab Shops and Commercial Establishments Act governed the present case. It was also pleaded that the termination of services of the claimant was legal and as such he was not entitled to any relief.

4. The claimant in his rejoinder dated 6th August, 1984, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 6th August, 1984 :—

- (1) Whether the Industrial Tribunal has no jurisdiction to try the present dispute ? OPM
- (2) Whether the reference is bad in law ? OPM
- (3) Whether the workman remained absent from duty without any intimation as pleaded ? OPM
- (4) Whether the termination of service of Shri Dharampal Singh was justified and in order ? If not, to what relief is he entitled ? OPM

6. It may be mentioned that the Management has examined one witness and documents, Ex. M-1 and M-2, have been tendered into evidence. The claimant has appeared in the witness box. After going through the entire evidence and hearing the representative of both the parties, my findings on the above issues are as under :—

Issue No 1 :

7. It was argued by the representative of the Management that the provisions of Punjab Shops and Commercial Establishments Act, 1958, applied to the present case and, as such, the Industrial Tribunal had no,

jurisdiction to decide the present case. Reliance was placed on the ruling reported as **Visakhapatnam Dt. Marketing Co-operative Society and Government of A.P. and others, 1977-II-LLJ page 332**. This ruling is distinguishable on facts because the same relates to the provisions of Andhra Pradesh Shops and Commercial Establishments Act, 1956, which are different from the provisions of Punjab Shops and Commercial Establishments Act, 1958. In the ruling reported as **The Nawanshahr Central Co-operative Bank Ltd. versus The Presiding Officers, Labour Court, Jullundur and another, 1980 (3) S.L.R. 358** it was held that it was not disputed that the Industrial Disputes Act is applicable to the clerks of the Petitioner which was an establishment under the Punjab Shops and Commercial Establishments Act, 1958, and the Hon'ble Punjab and Haryana High Court further held that the provisions of Section 25-H of the Industrial Disputes Act, 1947, applied to such an establishment. In view of the ruling reported as 1980(3) S.L.R. (Supra) it is held that the Industrial Tribunal has jurisdiction to try the present dispute. The issue is decided accordingly against the Management.

Issue No. 2 :

8. Since the provisions of Industrial Disputes Act, 1947, apply to the present dispute, the reference is not bad in law. The issue is decided accordingly against the Management.

Issue No. 3 :

9. MW-1 Shri Ramesh Chand stated that the firm was registered under the Punjab Shops and Commercial Establishments Act, 1947,—vide documents, Ex. M-1 and M-2. He further stated that the claimant joined service in January, 1982 and worked for one or two days only and thereafter he did not turn up, but he was again employed in April, 1982 and worked upto 30th April, 1982 and again left the job. He further stated that the claimant again joined service in June, 1982 and worked till August, 1982 and left the job and he was re-employed on 1st November, 1982 when he worked till 13th November, 1982 and thereafter he absented himself continuously.

10. Shri Dharam Pal Singh claimant has appeared as WW-1 and stated that he joined service in the respondent factory on 8th August, 1980 as Turner. He further stated that on 16th November, 1982 he demanded wages for the previous month as well as Diwali Sweets due to which his services were terminated. He also stated that he went to the factory continuously upto 20th November, 1982 for the job but he was not taken back on duty, when he gave the demand notice. He further stated that he went to the factory frequently for getting the job, but in vain, and that he was unemployed since then and was willing to join duty if full back wages were given to him.

11. A perusal of the above evidence would show that the case of Management is that the claimant joined duty in January, 1982, April, 1982 and June, 1982 and November, 1982 and he left the job after working one or two day in January, 1982 for one month in April, 1982, for three months since June, 1982 and worked for 13 days in November, 1982. The case of the claimant on the other hand is that he joined duty on 8th August, 1980 and worked continuously, but he was turned out when he demanded wages as well as Diwali sweets on 16th November, 1982. Firstly, the register produced by MW-1 Shri Ramesh Chand is not an authentic document because in cross-examination he stated that the said register had not been checked by any authority. Secondly, there is no documentary evidence to show that the claimant ever resigned from his job in January, 1982, April, 1982 and August, 1982 or that he gave any document in writing to the effect that he had received his dues in full and final settlement of his claim. Thirdly, no notice was sent to the claimant by the Management asking him to join duty. Fourthly, the claimant has deposed that he was in service since 8th August, 1980 and was serving in the respondent establishment regularly, when he was turned out on 16th November, 1982. Ex. M-2 (Form -B) shows that the establishment existed in 1980 because the application for registration was made on 10th January, 1983 but it is mentioned in this document that the establishment was in existence in 1980. This document shows that the establishment was got registered for the first time in 1983, whereas it should have been got registered in 1980 and in that event the names of the employees working in the Establishment in 1980 would have been mentioned in that document. All these circumstances, therefore, go to show that the plea of the management that the claimant worked for some time in 1982 only is without any force because the claimant has deposed that he was working since 8th August, 1980. His plea finds corroboration from the document. Ex. M-2 (Form B) because the Management applied for registration on 10th January, 1983 for the first time whereas this document should have been submitted in 1980 because the Establishment was in existence in the year 1980 as mentioned above. The claimant clearly stated that he was turned out on 16th November, 1982 when he demanded his wages and Diwali sweets. No notice was sent to the claimant asking him to join duty if he had absented himself from duty. All these circumstances, therefore, go to show that the claimant who was in service since 8th August, 1980 did not absent himself but on the other hand, his services were terminated on 16th November, 1982 by the Management. The issue is decided accordingly against the Management.

Issue No. 4 :

12. It was argued by the representative of the Management that the claimant was not entitled to reinstatement, but was entitled to compensation equivalent to two months salary as provided in Section 22(2) of the Punjab Shops and Commercial Establishment Act, 1958. In the ruling reported as 1980(3) S.L.R. page 358 (Supra) it was laid down that where the services of an employee were terminated in violation of the provisions of Section 22 of the Punjab Shops and Commercial Establishments Act, 1958, he was not entitled to reinstatement but would be entitled to compensation for two months, which he could recover under the provisions of the said

Act and since the provisions of Section 25-H of the Industrial Disputes Act, 1947, were not complied with in that case, therefore, the employee would be appointed from the date on which he reported for duty. In view of the above ruling it is held that the claimant is not entitled to reinstatement from the date of retrenchment i.e. 16th November, 1982 but he is entitled to compensation equivalent to two months wages which he can recover under the provisions of Section 22(2) of the Punjab Shops and Commercial Establishments, Act, 1958, but he would be given preference over any other person in case of re-employment in accordance with the provisions of Section 25-F of the Industrial Disputes Act, 1947. The award is passed accordingly.

Dated, the 4th November, 1985.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

Endorsement No. 842, dated the 5th November, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes, Act, 1947.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab/19864.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s Tecma India Ltd., Bahadurgarh.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 142 of 85

between

SHRI KAILASH YADAV, WORKMAN AND THE MANAGEMENT OF M/S. TECMA INDIA LTD.,
BAHADURGARH

Shri R.S. Dahiya A.R. for the workman.

Shri C.K. Agrawal A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause(c) of sub section (1) of the section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Kailash Yadav and the management of M/s. Tecma India Ltd., Bahadurgarh, to this Court, for the adjudication,—vide Haryana Government Gazette Notification No. 35769-74 dated 2nd September, 1985 :—

Whether the termination of service of Shri Kailash Yadav is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent as a Labourer on monthly wages of Rs.365 and that on 23rd March, 1985 the management procured his signatures upon some papers and forced him out of employment, which act of the management was unlawful, because the management could not have terminated his services in this illegal manner. So, he has prayed that he be reinstated alongwith all benefits of previous service and full back wages.

3. On the first date of hearing, before any reply could be filed, the management has placed on record a settlement deed Ex. M-1 arrived at with the workman,—vide which, the workman has received his entire dues from the respondent in full and final settlement of his claim. In that behalf statement of the learned Authorised Representative of the workman Shri R.S. Dahiya has been recorded. So, now, nothing survives for a adjudication. The reference is answered and returned accordingly. There is no order as to cost.

B. P. JINDAL,

Dated, the 25th October, 1985.

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.

Endst. No. 142-85/1773, dated the 5th November, 1985.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.

No. 9/5/84-6Lab./9865.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Tecma India Ltd., Bahadurgarh.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 148 of 85

between

SHRI DAYA RAM, WORKMAN AND THE MANAGEMENT OF M/S. TECMA INDIA LTD.,
BAHADURGARH

Shri R.S. Dahiya A.R. for the workman.

Shri C.K. Agrawal A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause(c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Daya Ram and the management of M/s Tecma India Ltd., Bahadurgarh, to this Court, for adjudication,—vide Haryana Government Gazette, Notification No. 36753-58 dated 6th September, 1985 :—

Whether the termination of services of Shri Daya Ram is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent as a Labourer on monthly wages of Rs. 365 and that on 23rd March, 1985 the management procured his signatures upon some papers and forced him out of employment, which act of the management was unlawful, because the management could not have terminated his services in this illegal manner. So, he has prayed that he be reinstated alongwith all benefits of previous service and full back wages.

3. On the first date of hearing, before any reply could be filed, the management has placed on record a settlement deed Ex. M-1 arrived at with the workman,—vide which, the workman has received his entire dues from the respondent in full and final settlement of his claim. In that behalf statement of the learned Authorised Representative of the workman Shri R.S. Dahiya has been recorded. So, now, nothing survives for adjudication. The reference is answered and returned accordingly. There is no order as to cost.

B. P. JINDAL,

Dated, the 25th October, 1985.

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.

Endst. No. 148-85/1774, dated the 5th November, 1985.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.